

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 20 OF 2009

Tuesday, this the 20th day of October, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

G. Sasidharan,
(Retd. Sarang, Office of the
Executive Engineer/Construction/
Southern Railway/Quilon), residing at
Santalayath House, Alumpeedika P.O.,
Ochira, Quilon District.

... **Applicant**

(By Advocate Mr. T.C.G. Swamy)

versus

1. Union of India, represented by
the General Manager, Southern Railway,
Headquarters Office, Part Town P.O.,
Chennai-3.

2. The Chief Administrative Officer,
Southern Railway/Works Construction
Branch, Egmore, Chennai-8.

3. The Divisional Personnel Officer,
Southern Railway, Trivandrum
Divisional Office, Trivandrum-14.

... **Respondents**

(By Advocate Mr. P. Haridas)

The application having been heard on 15.10.2009, the Tribunal
on 20-10-09 .. delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The grievance of the applicant in this O.A. is that he has been denied
pension and other terminal benefits though he is fully qualified for the same.

2. Brief facts of the case (according to the applicant) are as under:-

(a) The Applicant was initially appointed in the
Construction Organization prior to 1981 and treated as
temporary on and with effect from 01-01-1981 in the Group C

b/a

scale of pay of Rs.260-400. He was a Sarang and continued in that post. He was further promoted to the next grade Rs.330-480 in the Construction Organization. He had superannuated in May 2003.

(b) Vide Annexure A-2 order dated 10th March 1997, casual labourers of CE/CN/MS Unit who were found fit in Class B-1 and have already been empanelled as Gangman in Engineering Department were regularized in Engineering Department/TVC Division and allowed to continue in Construction on Ad hoc basis and this ad hoc status is for the higher pay scale and not related to the Gangman cadre in which the applicant has already been regularized and provided lien as Gangman in the scale of Rs.775-1025. The name of the applicant figures in the enclosure to Annexure A-2 at serial No. 51.

(c) Grant of regularization and maintenance of lien as Gangman in the scale of Rs.775-1025 has been reaffirmed in Annexure A-3, wherein the name of the applicant figured in 34.

(d) The applicant with two others filed O.A. No. 905/97 wherein the claim was that his regularization ought to have been in Group C and not Group D and thus, challenge was made against Annexure A-2. Likewise a number of other individuals too had filed O.As before the Tribunal and a common order dated 30th November 2000 (Vide Annexure A-4) was passed, holding as under:-

"7. A careful scrutiny of the above order would show that their pay need be fixed only on a regular post according to the instructions. While the applicants are retained in the construction organization for the self same work they were performing, we are of the considered view that the reduction is uncalled for and unjustified and will amount to violation of the principles of equal pay for equal work. Just because of the applicants' status changed from casual labour to regular employee they cannot be denied the wages for the work that they have been doing and are continuing to do. The impugned orders in these cases are, therefore, liable to be set aside.

8. In the result, all these applications are disposed of with the following declaration and directions :

(i) The applicants in all these cases shall be considered for regularization in Group 'C' according to their qualification and entitlement

giving them the benefit of Railway Board's order dated 9.4.97.

(ii) So long as the applicants are retained in the construction organization for performing the work which they have been doing prior to their empanelment by order dated 10/11.3.97 they shall be continued to be paid at the same rate as they were being paid till that date. Respondents shall consider the regularization of the applicants in Group 'C' giving them the benefit of the Railway Board's circular dated 9.4.97 as expeditiously as possible and till the resultant orders are issued, they shall not be disturbed from the present posting. No costs."

(e) The Railway Board's order dated 09-04-1997 referred to in the above order inter alia reads as under:-

"3. The question of regularization of the casual labour working in Group 'C' scales has been under consideration of the Board. After careful consideration of the matter, Board have decided that the regularization of casual labour working in Group 'C' scales may be done on the following lines :

(i) All casual labour in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB of the Railways for posts as per their suitability and qualification without any age bar.

(ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.

(iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective Units."

(f) In a subsequent order dated 24th May 2006 in OA 593/03 and connected O.As, (Annexure A-6) the Tribunal, referring to the order dated 30th November 2000 extracted above, observed, "The tenor of the order is intended to give the benefit of regularization to the applicants in the higher

post of Group C and their retention in the said post in which they had been working and their entitlement for the payment of wages at the same rate as they were being paid. The order of empanelment and absorption in Group D has not been interfered with by the Tribunal and the intention of the Tribunal was only to give them the benefits of empanelment to a higher post in terms of the Board's circular..... In fact, in para 12 of the reply statement, the respondents themselves have stated that 'moreover, despite the fact that such PCLs (Project Casual Labourers) are charged against the work charged posts temporarily, it is essential that their 'lien' is maintained in the open line, so that the service interests of such employees are protected for the purpose of granting promotion (as and when due), arranging settlement after retirement etc.,'

(g) In identical cases of EC Paulose (who was an applicant in OA 1194/97 which was decided along with applicant's OA No. 905/97 in the common order dated 30th August 2000 vide Annexure A-4) this Tribunal had, vide order dated 30th March 2007 in OA No. 694/2006 (Annexure A-7) held that the said individual is entitled to the pensionary benefits. In yet another case of P. Ramachandran Nair, who was also an applicant in the aforesaid common order dated 30th November 2000, the Tribunal vide its order dated 26th July 2007 in OA No. 426/07, had referred to the respondents' own action to afford the applicant therein the pension and other benefits, closed the OA after taking judicial notice of the same. Annexure A-8 refers.

(h) Referring to the above cases, the applicant had penned a representation dated 25th March 2008 and requested for grant of pension to him as well. This remained unanswered. Earlier, when the applicant had approached the Pension Adalat in 2003-04, the respondent had negatived the very same claim vide Annexure A-1 impugned order dated 19th November 2004. The applicant has come up against the said order, with an application for condonation of delay vide MA No. 28/2009. The ground adduced for the delay in filing the OA was on that in the impugned order dated 19th November 2004, the fact of the applicant having approached the Regional Labour Commission (C) Cochin in ID 8(1) of 2003 was referred to and the applicant had to obtain a copy of the same, vide Annexure A-5 and this has resulted in the delay in filing the O.A.

(i) The applicant has prayed *inter alia* for the following reliefs:-

- (i) Declare that the applicant is entitled to be granted pension and other retirement benefits as if he retired from service as a regular employee on 30.6.2003 in the light of A2 absorption;
- (ii) Direct the Respondents to grant the applicant pension

and other retirement benefits as if the applicant had superannuated from service as a regular employee on 30.6.2003 and direct further to grant all consequential arrears and other benefits with effect from 1.7.03;

(iii) Direct the respondents to grant the applicant interest @ 12% per annum on the arrears of pension and other retirement benefits with effect from the date from which the arrears fell due month after month till the date of final settlement.

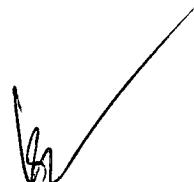
3. Respondents have contested the O.A. They have resisted the OA on the following main reasons:-

"13. Further, it is submitted that the O.A. is liable to be dismissed on the following reasons :

(a) The applicant approached this Hon'ble Tribunal after a lapse of 20 years after the pronouncement of his status by this Hon'ble Tribunal in the year 1989. Therefore, the OA is liable to be dismissed in limine on this ground alone.

(b) The applicant was not given any orders for regularization at any point of time as a regular employee after the applicant declining the Group 'D' empanelment. The applicant had not accepted the empanelment order for Group 'D' post and preferred to work as PCL as Group 'C' Serang at the risk of retrenchment and also challenged the empanelment order and having given the unwillingness for empanelment in Group 'D' the applicant cannot claim the benefits available for Group 'C' regular employee at this stage, after lapse of 6 years.

(c) The applicant had filed O.A. No.K-304/1988 before this Hon'ble CAT to challenge the empanelment order for Group 'D' absorption to avoid the reduction in emoluments and chose to remain as a Group 'C' PCL (higher pay than Group 'D' regular) at the risk of retrenchment. The applicant had accepted the orders of this Hon'ble CAT to the effect that "his continuance as skilled labourer till he gets a chance to be empanelled in skilled category against 25% promotional quota, was subject to the risk of being retrenched in accordance with law". Now, he is



playing a different tune and approaching this Hon'ble CAT for pension on par with regular employees.

(d) The reasons and circumstances stated in the MA for condoning the delay in filing the OA can not be accepted and it is liable to be dismissed on account of laches and negligence.

(e) The temporary status attained PCLs are not eligible for pension. The Apex Court had decided in Ramkumar Vs. UOI case that the Pension is not applicable to temporary status attained PCLs."

4. The applicant has filed his rejoinder, reiterating his stand as contained in the O.A.

5. Counsel for the applicant referred to all the annexures and summarized his arguments as under:-

(a) That the applicant had the lien in Group D has not been cancelled nor intended to be cancelled by the respondents. While the case of EC Paulose and Ramachandran Nair referred to earlier were serving employees, the case of one Abubaker squarely fits in with the case of the applicant, as he was also, like the applicant, superannuated.

(b) Others similarly situated have already been granted the pension and other terminal benefits.

(c) The delay involved was due to reference of the I.D. case and the applicant had to procure a copy of the order, which had taken time. As, in matters of limitation, the Tribunal is liberal when the case has full merits, the application for condonation of delay deserves being allowed.

6. Counsel for the respondents argued that the applicant always agitated against the respondents' action for one reason or the other and he himself declined to accept empanelment in Group D Gangman post when he was considered for empanelment by TVC Division and challenged the empanelment order by filing OA before this Tribunal and thus, lost the

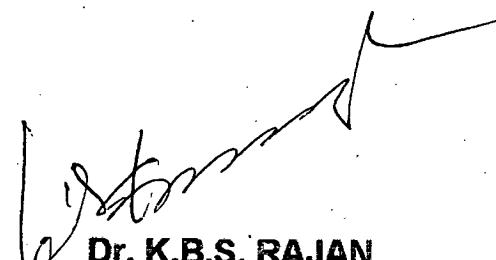
opportunity of getting regularized in Group D on the basis of the number of days put in as casual labourer. Referring to para 9 of the reply the counsel for the respondent submitted that limitation is staring at the applicant. Again, attention was invited to the decision in the case of Ram Kumar vs U.O.I (1988) SCC 306 whereby the Apex Court held that Pension is not applicable to temporary status attained PCLs. The applicant had been paid the gratuity as per Gratuity Act and leave encashment.

7. Arguments were heard and documents perused. By a separate order delay stands condoned, taking into account the justifications given in the application and also on the ground that the case is meritorious. That the case is analogous to the case of E.C.Paulose, Ramachandran Nair has not been denied by the respondents. Again, the names of the applicant and others as above, figure in the statement at Annexure A-2 and A-3, wherein one column reflects, "Regularization and lien maintained as Gangman in the scale of Rs.775-1025" In the case of Paulose, Ramachandran Nair as well as Abubaker, the Tribunal allowed their claim. It is settled law that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court. (see *Amrit Lal Berry v. CCE, (1975) 4 SCC 714*). As such, the applicant is entitled to the relief claimed, as in the case of E.C. Paulose and others.

8. In view of the above, the OA is allowed. It is declared that the applicant is a regular employee of the Railways, having his regularization

effective from 10-03-1997. He is therefore, entitled to the pensionary benefits on the basis of total length of qualifying service both as a temporary status casual labour (to the extent admissible for pension purpose) as well as a Group D employee. Respondents are directed to work out the extent of qualifying service and also work out his terminal benefits as well as pension and deduct from the terminal benefits the extent of gratuity paid under the Payment of Gratuity Act and pay the applicant the monthly pension also. Though interest has been claimed, as the applicant did have with him the gratuity amount paid, which when refunded would be refunded without interest, he is also not entitled to any interest on the amount payable to him. While ^{Orders w/} formal ^{order} in compliance of this order ^{order} of the Tribunal should be passed within a period of three months and payment of pension to the applicant shall follow immediately thereafter, arrears of pension as well as other terminal benefits as reduced by the gratuity amount already paid, shall be paid to the applicant within a further period of three months. The respondents shall make available the working sheet of pension and other terminal benefits, as reduced by the gratuity paid to the applicant. If delay is envisaged for plausible reasons, respondents are given liberty to move the Tribunal before expiry of the time granted as above for further time, indicating therein the extent of action taken and balance action to be taken. No cost.

(Dated, the 20th October, 2009.)


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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